

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

DAVID GONZALEZ, JR.
TDCJ-CID #1505685

v.

RICK THALER

§
§
§
§
§

C.A. NO. C-10-069

ORDER GRANTING PETITIONER'S MOTION FOR A CONTINUANCE

Petitioner is a state inmate currently incarcerated at the Connally Unit in Kenedy, Texas who has filed a habeas petition pursuant to 28 U.S.C. § 2254 challenging his conviction. (D.E. 1). Pending is petitioner's motion for a continuance. (D.E. 35). He seeks additional time to obtain affidavits in support of his petition. Id. at 1-2. Petitioner also appears to request a court-appointed attorney to assist him in obtaining these affidavits. Id. at 2.

There is no constitutional right to counsel in federal habeas proceedings. Wright v. West, 505 U.S. 277, 293 (1992) (Constitution "guarantees no right to counsel on habeas"); see also Elizalde v. Dretke, 362 F.3d 323, 329 (5th Cir. 2004) (same); Johnson v. Hargett, 978 F.2d 855, 859 (5th Cir. 1992) (same). Rule 8(c) of the Rules Governing § 2254 Cases requires that counsel be appointed if the habeas petition raises issues that mandate an evidentiary hearing.


Here, petitioner's request for counsel is unnecessary. The record reveals that petitioner has demonstrated ample ability to submit filings in support of his petition. He is more than capable of obtaining any affidavits that he deems necessary to support his petition from persons who are willing to provide them. Nothing in these briefs establishes that court-appointed counsel is necessary at this time.

Counsel will be assigned sua sponte if there are issues that mandate an evidentiary hearing be held. Moreover, the Court may appoint counsel if discovery is ordered and there are

issues necessitating the assignment of counsel. See Rule 6(a) of the Rules Governing § 2254 Cases; Thomas v. Scott, 47 F.3d 713, 715 n.1 (5th Cir. 1995).

Consequently, to the extent that petitioner is requesting the appointment of counsel, his request is DENIED without prejudice. However, petitioner's motion for a continuance, (D.E. 35), is GRANTED. Petitioner has until Friday, December 3, 2010 to file his response to respondent's motion for summary judgment.

ORDERED this 3rd day of November 2010.


BRIAN L. OWSLEY
UNITED STATES MAGISTRATE JUDGE